IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STEELWORKERS OF AMERICA, AFL-CIO/CLC and LEWIS GRIFFIN, GEORGE HEMMERT, GEORGE KEDDIE and JANICE SCOTT	:	CIVIL ACTION
	:	
	:	NO. 05-CV-0039
vs.	:	
	:	
ROHM AND HAAS COMPANY, and ROHM AND HAAS COMPANY HEALTH AND WELFARE PLAN	:	

MEMORANDUM AND ORDER

JOYNER, J. **September 14, 2006**

This civil action is now before the Court for resolution of the parties' cross-motions for summary judgment. For the reasons set forth below, the plaintiffs' motion shall be granted and the defendants' motion shall be denied.

History of the Case

This action commenced on January 5, 2005 when the Plaintiff Union United Steelworkers of America, AFL-CIO/CLC and four of its individual members, George Hemmert, Lewis Griffin, George Keddie and Janice Scott, filed a complaint against Defendants Rohm and Haas Company and the Rohm and Haas Company Health and Welfare Plan contesting the defendants' denial of disability benefits to Messrs. Griffin, Hemmert and Keddie and Ms. Scott. The plaintiffs' complaint alleges that under the Rohm and Haas

Company Health and Welfare Plan (the "Plan"), Rohm and Haas employees who become disabled are eligible for short-term and long term disability benefits and/or a disability retirement allowance and that these disability benefits are part of a collectively bargained package of benefits which the Union has negotiated over the years and which are subject to the grievance and arbitration procedures outlined in the collective bargaining agreements. The complaint further alleges that each of the individual plaintiffs has applied for and been denied either disability retirement or long term disability benefits and that each has either fully exhausted any applicable plan claims procedure or any further attempts to exhaust would have been futile. Although each of the plaintiffs filed grievances protesting their denial of benefits, Rohm and Haas (hereinafter "the Company") failed to respond. The Union thereafter demanded that the Company arbitrate the dispute but the Company informed the Union that it refuses to take these cases to arbitration. The plaintiffs then filed this lawsuit.

Count I of the complaint charges that in refusing to process the plaintiffs' grievances in accordance with the grievance and arbitration provisions of the collective bargaining agreements, the Company is in violation of Section 301 of the Labor Management Relations Act, 29 U.S.C. §185 ("LMRA") and it seeks the entry of a judgment ordering Rohm and Haas to arbitrate the

disputes. In Count II, Plaintiffs allege that the Company violated their rights to disability benefits and that violation is actionable under Section 502 of the Employee Retirement Income Security Act, ("ERISA"), 29 U.S.C. §1132(a)(1)(B) and (a)(3). Although Defendants moved for dismissal of the plaintiffs' complaint pursuant to Fed.R.Civ.P. 12(b)(6), that motion was denied via Memorandum and Order dated June 29, 2005. Under the Scheduling Order dated September 15, 2005, the two counts of the complaint were to be separately litigated, with discovery on Count I to proceed first and to close by January 31, 2006. Discovery in this matter having now been completed, both parties have filed their cross-motions for summary judgment as to Count I only.[1]

Summary Judgment Standards

Summary judgment is appropriate where, viewing the record in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fasold v. Justice, 409 F.3d 178, 183 (3d Cir. 2005); Michaels v. New Jersey, 222 F.3d 118, 121 (3d Cir. 2000); OTA Partnership v. Forcenergy, Inc., 237 F.Supp.2d

[1] Per the parties' discussions at the Rule 16 conference, the Scheduling Order further provided in paragraphs 3 and 4 that, "[s]hould the Court enter judgment for Plaintiff United Steelworkers of America AFL-CIO/CLC on Count I as a result of dispositive motions or a trial, Plaintiffs will withdraw with prejudice Count II," and "[s]hould the Court enter judgment for Defendant on Count I as a result of dispositive motions or a trial, the Court will then enter a separate Scheduling Order for discovery and dispositive motions for Count II."

558, 561 (E.D.Pa. 2002). Indeed, the standards to be applied by district courts in ruling on motions for summary judgment are clearly set forth in Fed.R.Civ.P. 56(c), which states, in pertinent part:

> "....The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

As the critical inquiry for a district court is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law," this rule compels the court to look beyond the bare allegations of the pleadings to determine if they have sufficient factual support to warrant their consideration at trial. Marable v. West Pottsgrove Township, 176 Fed. Appx. 275, 279 (3d Cir. April 19, 2006), quoting Anderson v. Liberty Lobby, 477 U.S. 242, 251-252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Liberty Lobby, Inc. v. Dow Jones & Co., 838 F.2d 1287, 1292 (D.C.Cir. 1988), cert. denied, 488 U.S. 825, 109 S.Ct. 75, 102 L.Ed.2d 51 (1988). It should be noted that "[m]aterial" facts are those facts that might affect the outcome of the suit under the substantive law governing the claims made and that an issue of fact is "genuine" only "if the evidence is such that a

reasonable jury could return a verdict for the non-moving party" in light of the burdens of proof required by substantive law. Anderson, 477 U.S. at 248, 252, 106 S.Ct. at 2510, 2512; The Philadelphia Musical Society, Local 77 v. American Federation of Musicians of the United States and Canada, 812 F.Supp. 509, 514 (E.D.Pa. 1992).

Discussion

By way of the cross-motions which are now before us, both parties assert that, as there are no material factual issues in dispute, they are each entitled to the entry of judgment in their favor as a matter of law. The issue with which we are faced in this case is, therefore, whether or not the Rohm and Haas Health and Welfare Plan is part of the collective bargaining agreement such that a grievance arising out of the denial of disability benefits must be submitted to arbitration.

Under Section 301 of the LMRA, federal courts are authorized "to fashion a body of federal law for the enforcement of collective bargaining agreements." Litton Financial Printing Division v. NLRB, 501 U.S. 190, 202, 111 S.Ct. 2215, 2223, 115 L.Ed.2d 177 (1991). As to the substantive content of this federal common law, traditional rules of contract interpretation provide a plenteous resource, but will be mined only when compatible with federal labor policy. Luden's, Inc. v. Local Union No. 6, 28 F.3d 347, 354 (3d Cir. 1994).

In labor law, arbitration is clearly the preferred method for resolving disputes between the union and the employer. Butler Armco Independent Union v. Armco, Inc., 701 F.2d 253, 255 (3d Cir. 1983). The Supreme Court has established certain general principles for determining the arbitrability of a dispute involving a collective bargaining agreement. Lukens Steel Company v. United Steelworkers of America (AFL-CIO), 989 F.2d 668, 672 (3d Cir. 1993). First, it must be remembered that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to so submit." AT & T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643, 648-649, 106 S.Ct. 1415, 1418, 89 L.Ed.2d 648 (1986), quoting Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582, 80 S.Ct. 1347, 1353, 4 L.Ed.2d 1409 (1960) and Steelworkers v. American Mfg. Co., 363 U.S. 564, 570-571, 80 S.Ct. 1343, 1364-1365, 4 L.Ed.2d 1403 (1960). Second, the question of arbitrability -- whether a collective bargaining agreement creates a duty for the parties to arbitrate the particular grievance -– is undeniably an issue for judicial determination and thus, unless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator. Id. Third, "where the contract contains an arbitration clause, there is a presumption of arbitrability in

the sense that an order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." Wright v. Universal Maritime Service Corporation, 525 U.S. 70, 78, 119 S.Ct. 391, 395, 142 L.Ed.2d 361 (1998); AT & T, 475 U.S. at 650, 106 S.Ct. at 1419.

That is not to say that the presumption of arbitrability will apply in all circumstances. Local 827 International Brotherhood of Electrical Workers v. Verizon New Jersey, Inc., No. 05-3613, 2006 U.S. App. LEXIS 21062 at *12 (3d Cir. Aug. 17, 2006). Where the arbitration provision is narrowly crafted, it cannot be presumed, as it might if it were drafted broadly, that the parties agreed to submit all disputes to arbitration. Id., at *13, quoting Trap Rock Industries v. Local 825, International Union of Operating Engineers, 982 F.2d 884, 888, n.5 (3d Cir. 1992). Thus, if the arbitration clause is clearly broad or ambiguous, the presumption of arbitrability is applied but if the clause is not ambiguous and clearly delimits the issues subject to arbitration, the presumption of arbitrability does not apply. Id., at *16. In accord, Wright v. Universal Maritime, 525 U.S. at 79, 119 S.Ct. at 396. ("The presumption only extends [so] far, whether or not the text of the agreement is similarly limited. It may well be that ordinary textual analysis of a CBA

will show that matters which go beyond the interpretation and application of contract terms are subject to arbitration; but they will not be presumed to be so.") Accordingly, the presumption of arbitrability may be rebutted where either: (1) the existence of "an express provision excluding the grievance from arbitration" has been established or (2) the "most forceful evidence of a purpose to exclude the claim from arbitration" has been provided. Lukens Steel, 989 F.2d at 673, quoting AT &T, supra., and Warrior & Gulf, 363 U.S. at 584-585, 80 S.Ct. at 1354. In view of these principles, the Third Circuit has suggested that the Courts direct their analysis to three issues: (1) does the present dispute come within the scope of the arbitration clause? (2) does any other provision of the contract expressly exclude this kind of dispute from arbitration? and (3) is there any other "forceful evidence" indicating that the parties intended such an exclusion? E.M. Diagnostic Systems, Inc. v. Local 169, International Brotherhood of Teamsters, 812 F.2d 91, 95 (3d Cir. 1987).

In this case, it does not appear as though there is any one particular clause or provision in the collective bargaining agreement between the Union and the Company[2] which specifically

[2] The parties appear to agree that reference to the "Agreement between United Steelworkers of America International Union and its Local Union No. 88G Bristol Pennsylvania and the Bristol Plant of Rohm and Haas Company" in effect between May 8, 2000 to May 7, 2004 is appropriate for purposes of this litigation. (See Exhibit "C" to Plaintiff's Motion for Summary Judgment and Exhibits "1" and "2" of Defendant's Appendix in Support of Defendant's Motion

delineates what types of issues or grievances are to be submitted to arbitration. Indeed, several of the Articles in that Agreement appear relevant. First, Article II, Section 5 provides, in pertinent part:

> The provisions of this Agreement hereafter pertain only to the wages, hours, and working conditions of the ... employees.

The Grievance Procedure is outlined in Article V as a five-step procedure and under Step 5:

> Should the President of the Local Union and the Labor Relations Manager or their representatives fail to reach agreement, each party will prepare a statement of its position with a copy given to the other. These statements will then be forwarded to the Joint Labor Relations Committee (J.L.R.C.).
>
> a) The J.L.R.C., for the purpose of hearing the grievance, will consist of the Plant Manager or his designated representative, Area Manager (from area concerned)Labor Relations Manager and/or designated representative, President of the International Union or his designated representative, President and Vice Presidents of the Local Union, and area grievance representative. Each party may also include one observer who is not part of the Joint Labor Relations Committee. Should agreement not be reached thereby, the grievance may be referred to the Federal Mediation and Conciliation Service for mediation, but should the grievance involve interpretation of the contract, then either party may submit the matter to arbitration as described in Article VI....

Article VI discusses arbitration:

> 1. The arbitrator shall be selected from a panel of nine (9) arbitrators supplied by the Federal Mediation and Conciliation Service (FMCS). After receipt of the FMCS panel, each party will alternately strike names until

---

for Summary Judgment).

there is one remaining name, who shall be the arbitrator. The rules of the FMCS shall apply.

2. When certifying a grievance to arbitration, the Union will send a notice to the Company.

3. The sole responsibility of said arbitrator shall be to interpret the meaning of the Articles of this Contract and it in no way shall be construed that the arbitrator shall have the power to add to, subtract from, or modify in any way the terms of this Agreement.

4. Each party shall bear its own expense pursuant to arbitration proceedings but shall share equally in any general expenses jointly incurred as a result of these proceedings.

5. Grievance issues submitted to arbitration which cover different subject matter may not be taken to the same arbitration hearing unless the parties so agree.

6. The decision in such proceedings shall be rendered within thirty (30) calendar days of the conclusion of the hearing and shall be final and binding on both parties, in accordance with FMCS rules.

The only contractual clause in the CBA that refers in any way to disability benefits is set forth in Article XIX, Section 3 governing Medical Examinations. That section reads as follows:

> Before any employee's status is changed due to physical incapacity, he shall be entitled to a medical examination by an impartial physician should there be disagreement between the Company physician and the employee's personal physician. When the Company physician and the employee's personal physician disagree, and prior to the receipt of an impartial physician's opinion, the employee will be placed on disability absence and be provided benefits under the provisions of the Sickness and Accident plan, provided no suitable reassignment is available. It shall be the Company's and the Union's goal to have such situations resolved as soon as possible.

Distilled to its essence then, (1) the collective bargaining

agreement applies only to the wages, hours, and working conditions of the employees, (2) only grievances which involve interpretation of the contract may be submitted to arbitration and (3) the sole responsibility of the arbitrator is to "interpret the meaning of the Articles of this Contract..."

Plaintiffs assert that because disability and other benefits were, from time to time, part of the negotiations which ultimately led to the various collective bargaining agreements between them, those benefits are encompassed under the agreement as "wages" and "working conditions." Again, "whether or not a dispute is arbitrable depends upon 'the intent of the parties regarding arbitration.'" Lukens Steel, 989 F.2d at 672 quoting John F. Harkins Co. v. Waldinger Corp., 796 F.2d 657, 660 (3d Cir. 1986), *cert. denied,* 479 U.S. 1059, 107 S.Ct. 939, 93 L.Ed.2d 989 (1987). As we find the contract language somewhat ambiguous in this regard, we look now to the evidence of the parties' bargaining history for evidence of their intent and to ascertain whether or not disputes of this nature were meant to be excluded from arbitration.

In so doing, it appears from the portions of the 1966-1999 negotiation summaries provided that the long term disability program was first negotiated into the union contract in or around 1966 and that it was a bargaining point during various subsequent negotiations over the years. (Exhibit "B" to Plaintiffs' Motion

for Summary Judgment, Deposition of James Ryan, pp. 25-26). It further appears that in the intervening years, there was no bargaining over whether or not long term disability benefits would continue to be part of the package of benefits offered to union members, but only over the income level of benefits and the waiting period which union members had to endure before such benefits could be awarded. (See Exhibits "H," "K"-"Q" of Plaintiff's Exhibits in Support of Motion for Summary Judgment; Exhibit "A" to Defendants' Motion for Summary Judgment, Deposition of Donald Markert, pp. 61, 166-167, 170-174, 179). Although there is some overlap between the benefits available to union members and non-bargaining unit employees, not all of the benefits provided to union members are provided to non-union employees. (Plaintiffs' Exhibit "J," Deposition of Barbara G. Mullin, p. 87). The Company further recognizes that disputes over disability income benefits could be the proper subject of a grievance under certain circumstances and if the procedural steps satisfied, could be subject to arbitration. (Plaintiffs' Exhibit "B" pp. 82-83). On at least one prior occasion, the Company has agreed that the issue of whether the Company violated the Disability Income Program when it refused to pay an employee disability retirement benefits was properly arbitrated. (Plaintiffs' Exhibit "U").

Defendants assert that because there is only a passing

reference to disability benefits in Article XIX, §3 of the CBA, that we should adhere to the Third Circuit's holding in RCA Corporation v. Local 241, International Federation of Professional and Technical Engineers, 700 F.2d 921, 927 (3d Cir. 1983). Specifically, the Court held in that case, that where a benefits plan "fails to provide an independent basis for mandatory arbitration,..." the "mere mentioning in the General Agreement is insufficient reason to construe [it] as part and parcel of the general agreement." *In accord*, Lauletta v. Transworld Express, Inc., Civ. A. No. 96-4098, 1998 U.S. Dist. LEXIS 17392 (E.D.Pa. Oct. 29, 1998)("Although the CBA refers to the plan in various sections, none indicates that the parties intended the administration of the plan to be part of the CBA, and thus subject to arbitration."). While our review of the contract also discloses no language specifically expressing an intent to incorporate the Plan into the CBA, we nevertheless find, based on the bargaining history and deposition testimony discussed above, that sufficient evidence exists that the parties did in fact intend to do so. For this reason and given the absence of any other "forceful evidence" indicating that the parties intended to exclude disputes of this nature from the arbitral process, we find that the presumption of arbitrability has not been overcome here.

We shall therefore grant the plaintiffs' motion and deny

that of the defendants pursuant to the attached order.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STEELWORKERS OF AMERICA, AFL-CIO/CLC and LEWIS GRIFFIN, GEORGE HEMMERT, GEORGE KEDDIE and JANICE SCOTT	:	CIVIL ACTION
	:	NO. 05-CV-0039
vs.	:	
ROHM AND HAAS COMPANY, and ROHM AND HAAS COMPANY HEALTH AND WELFARE PLAN	:	

ORDER

AND NOW, this day of September, 2006, upon consideration of the Cross Motions for Summary Judgment of the Plaintiffs and the Defendants (Document Nos. 21, 22 and 24) and for the reasons set forth in the preceding Memorandum Opinion, it is hereby ORDERED that the Plaintiffs' Motion is GRANTED, Defendants' Motion is DENIED and Judgment is hereby entered in favor of the Plaintiffs and against Defendants as a matter of law on Count I of Plaintiffs' Complaint.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.